

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Declaratory Ruling of the)	
Cellular Telecommunications &)	
Internet Association)	
_____)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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SUMMARY

In these comments, the United States Telecom Association (USTA) responds to the Petition for Declaratory Ruling filed by the Cellular Telecommunications and Internet Association (CTIA). CTIA's Petition asks the Federal Communications Commission (FCC) to expand the local number portability (LNP) obligations of incumbent local exchange carriers (ILECs or wireline incumbents) from today's rate center, service provider portability requirements to a scheme requiring location portability to commercial mobile radio service (CMRS) providers outside of a wireline incumbent's rate center. Such a change in FCC policy would result in dramatically increased costs for ILECs that would ultimately have to be borne by ILEC customers. While there is much speculation concerning customer benefits deriving from such an expansion of existing LNP requirements, there is no credible documentation that there is material customer demand for the LNP expansion sought by CTIA. In fact, CTIA has long taken the position that LNP obligations should not be imposed upon CMRS providers at all. It has taken the FCC to court to challenge the FCC's right to impose LNP obligations on CMRS providers. It is scheduled to argue its case for full relief from FCC imposed LNP requirements on April 15, 2003, while, at the same time, it presses the FCC to expand ILEC LNP obligations for the benefit of CMRS providers.

The CTIA Petition is an ill-advised attempt to put pressure on the ILEC industry, by threatening the imposition of increased LNP obligations, to support the wireless industry's efforts to obtain relief from current FCC LNP requirements. What is particularly curious, and disappointing, about the Petition, is that USTA has previously stated to the FCC that it opposes wireless LNP.

CTIA acknowledges the existence of inter-modal competition for voice services. Yet, it proposes increased regulatory burdens for ILECs as the appropriate FCC response to increased

competition. As CTIA appropriately beats the drum of CMRS deregulation in response to the existence of robust competition among CMRS providers, it hypocritically petitions the FCC to increase regulatory burdens for wireline incumbents. CTIA well knows that increased regulation for providers of competitive services is counter-productive and stifles infrastructure investment. It imposes significant, unwarranted disabilities on service providers with little or no meaningful customer benefit. USTA supports regulatory parity among providers of functionally equivalent services, but USTA also believes that regulatory parity is best achieved through deregulation. All competitive providers of functionally equivalent telecommunications services should be free of economic regulation. Non-economic regulations should only be imposed (equally) on these service providers when a significant customer benefit can be shown and the benefits to customers clearly outweigh the costs to service providers of the regulatory burdens. Regulators should always look to deregulate first and treat with great skepticism entreaties to impose or increase regulations for competitive providers of functionally equivalent services.

Despite CTIA's Petition, USTA remains opposed to the imposition of LNP requirements on CMRS providers. USTA's opposition continues because it is the right outcome and the best result for telecommunications customers and the Nation. There is no evidence that customers are willing to pay increased rates for CMRS service in exchange for wireless LNP. Certainly, the expense that CMRS providers would incur to deploy LNP is capital that could be better invested in upgrading their critical infrastructures to ensure survivability and continuity of service in the case of natural disaster or terrorist attack. The same is true for wireline incumbents, and all telecommunications services providers that invest in, and maintain, critical communications infrastructures.

It would certainly be premature for the FCC to consider the CTIA Petition prior to the D.C. Circuit's decision in *Cellular Telecommunications & Internet Association and Cellco Partnerships, d/b/a Verizon Wireless v. FCC*. It would be unwarranted, arbitrary and capricious for the FCC to impose increased LNP obligations on wireline incumbents in order to "facilitate inter-modal competition" with CMRS providers should the Court of Appeals strike down the FCC's LNP requirements for CMRS providers.

Should CTIA push the FCC to act on its Petition, it invites the FCC to engage in a lengthy, but necessary, exercise to examine the regulatory issues beyond LNP that impact fair inter-modal competition between wireless and wireline service providers, including the conditions upon which universal service support should be available to both. Such an exercise is not in the interest of either industry and only serves to play into the hands of those that wish to regulate the telecommunications industry while looking backwards rather than with an eye toward the future.

The FCC should deny the CTIA Petition.

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COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC / Commission) Rules 1.415 and 1.419,² hereby provide its comments to the Cellular Telecommunications & Internet Association's (CTIA) Petition for Declaratory Ruling (Petition).³ Pursuant to section 1.2 of the FCC's rules,⁴ the FCC now seeks comment on CTIA's Petition.

In its Petition, CTIA asks the FCC to rule that wireline carriers are obligated to provide portability of their customers' telephone numbers to CMRS providers whose service area overlaps the wireline carriers' rate centers. In addition, CTIA contends that some local exchange carriers (LECs) have narrowly construed the number portability obligations with regard to CMRS providers, taking the position that portability is required only where CMRS providers have established a presence in the landline rate center where customers seek to port numbers from the LEC to CMRS providers. We disagree.

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ Telephone Number Portability, CC Docket No. 95-116, Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, filed January 23, 2003 (Petition).

⁴ 47 C.F.R. § 1.2.

BACKGROUND

In the *Telephone Number Portability*, First Report and Order,⁵ the FCC promulgated rules and deployment schedules for number portability. The FCC ordered LECs to begin the phased development of a long term service provider local number portability (LNP) method in the 100 largest Metropolitan Statistical Areas (MSAs). In addition, the FCC found that under section 251(b) (2) of the Communications Act of 1934, as amended (the Act),⁶ that the public interest required Commercial Mobile Radio Services (CMRS) carriers to provide the same LNP obligations as LECs, even though CMRS carriers were not expressly mentioned in the statute. The FCC relied on its “independent authority” found in sections 1, 2, 4(i) and 332 of the Act, to require wireless number portability.⁷ The FCC required wireless carriers to have the capability to port telephone numbers anywhere in the country by December 31, 1998.

On September 1, 1998, the FCC granted CTIA’s request for a nine month extension of the wireless LNP deadline in order to allow additional time for the industry to develop test standards.⁸ In 1999, CTIA petitioned the Commission for forbearance from CMRS portability obligations until the completion of the five-year build out period for broadband PCS carriers.⁹ Under section 10 of the Act,¹⁰ the FCC granted another extension of the deadline until November 24, 2002. Finally, on July 26, 2002, the FCC ruled on the Verizon Wireless Petition for Partial

⁵ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996).

⁶ See 47 U.S.C. § 251(b) (stating (b)(2) Number Portability.-The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission).

⁷ *Id.* ¶¶ 152-53. See also 47 U.S.C. §§ 1, 2, 4(i) and 332.

⁸ *Cellular Telecommunications Industry Association’s Petition for Extension of Telephone Number Portability Implementations Deadlines*, Memorandum Opinion & Order, 13 FCC Rcd 16315, 16317, (1998).

⁹ *Cellular Telecommunications Industry Associations Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, Memorandum Opinion & Order, 14 FCC Rcd 3092 (1999).

¹⁰ 47 U.S.C. § 10.

Forbearance (Verizon Petition) from CMRS portability obligations.¹¹ The Verizon Petition sought a permanent forbearance under section 10 of the Act for CMRS providers because of the high costs associated with implementation of wireless LNP far outweigh any benefits. The FCC disagreed and extended the LNP deadline until November 24, 2003, to reduce the burdens associated with the simultaneous implementation of porting and pooling.

In reaction to the FCC's Verizon Petition determination, CTIA has appealed to the United States Court of Appeals for the District of Columbia Circuit, *See Cellular Telecommunications & Internet Association and Cello Partnerships, d/b/a Verizon Wireless v. FCC*, No. 02-1264 (D.C. Cir.) (CTIA Appeal). In its appeal, CTIA alleges that wireless LNP has substantial implementation costs (e.g., personnel hiring and training, billing system and network modifications). In addition, CTIA contends that intra-modal and inter-modal competition is flourishing without wireless LNP. Consequently, CTIA contends that the Court should vacate the Commission's rules that require wireless LNP.

In previous filings before the FCC, USTA has stated its position in regards to LNP.¹² USTA opposes wireless LNP. We support LNP implementation in those exchanges in the top 100 MSAs where more than one local exchange carrier operates. However, USTA does not support implementation of LNP for any rural (as defined in the 1996 Act) or two percent carrier in the top 100 MSAs without a bona fide request. We oppose expansion of LNP outside the top 100 MSAs. USTA contends that it is essential that any LNP deployment requires a cost recovery mechanism. Moreover, we support LNP deployment where the existence of competition

¹¹ *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and telephone Number Portability*, Memorandum Opinion & Order, 17 FCC Rcd 14972 (2002) (Verizon Petition).

¹² *See e.g. Numbering Resource Optimization; Telephone Number Portability*, Further Notice of Proposed Rulemaking, CC Docket Nos. 99-200 and 95-116, Ex Parte Presentation of Lawrence E. Sarjeant, United States Telecom Association, (Dec. 3, 2002).

provides a justification for its deployment and where carriers that are required to deploy LNP are allowed to recover their costs on a competitively neutral basis.

DISCUSSION

I. USTA Staunchly Opposes CTIA's Petition And The FCC Should Dismiss Its Petition As Premature

USTA contends that a final determination in regards to wireless LNP must occur before any issues surrounding inter-modal LNP can be addressed. CTIA contends that "inter-modal number portability will not, as a practical matter, occur in most instances, yet wireless carriers and their customers will be forced to shoulder its enormous burden."¹³ To assume that this statement is true, USTA would have to discount the validity of CTIA's Appeal before the D.C. Circuit, which we will not do because we oppose wireless LNP and the FCC's ill conceived mandate to require wireless carriers to provide the functionality.

Moreover, it would be premature for the FCC to even consider the CTIA Petition prior to the D.C. Circuits decision in the CTIA Appeal. We believe that it would be unjust for the FCC to impose increased LNP obligations on ILECs to facilitate inter-modal competition with CMRS providers at the same time the D.C. Court of Appeals strikes down the LNP requirements for CMRS providers. The potential disparate financial and anti-competitive implications for wireline carriers to port numbers to wireless providers without *quid pro quo* by the FCC would be arbitrary and capricious and not in the public interest. Thus, USTA contends that CTIA's Petition is premature and should be denied.

¹³ See Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association, January 23, 2003 at 2 (CTIA Petition).

II. The Disparity in Local Serving Areas Of Wireless And Wireline Carriers Impacts Inter-modal LNP

In the *Telephone Number Portability*, Second Report and Order (LNP Second Report & Order),¹⁴ the FCC determined that wireline LNP would be bound by the existing rate center of the ILEC. This determination was made based on the finding of the North American Numbering Council (NANC) that “location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating and routing concerns.”¹⁵ The NANC determination was adopted by the FCC and is codified at 52.26 of the Commission’s rules.¹⁶ “By contrast, the Commission has established the MTA as the local calling area for CMRS, permitting CMRS carriers to use a single switch to serve radio facilities over a very wide geographic area.”¹⁷ The differences between wireline and wireless carriers calling areas has resulted in “disparity” because of the geographic scope of Service Provider number portability was limited by the FCC to the wireline rate center.¹⁸ Thus, in the LNP Second Report & Order, the FCC directed the NANC to consider the disparity question.

In May of 1998, the NANC submitted to the Chief of the Common Carrier Bureau the Local Number Portability Administration Working Group Report on Wireless Wireline Integration (Working Group Report).¹⁹ The Working Group Report concluded that “consensus

¹⁴ Telephone Number Portability, CC Docket No. 95-116, Second Report & Order, 12 FCC Rcd 12281 (1997) (LNP Second Report & Order).

¹⁵ North American Numbering Council Local Number Portability Administration Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 5 (§ 7.3) (rel. April 25, 1997).

¹⁶ 47 CFR § 52.26.

¹⁷ See CTIA Petition at 5 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket NOs. 96-98; 95-185, First report and Order, 11 FCC Rcd 15499, ¶ 1036 (1996)).

¹⁸ See *North American Numbering Council LNPA Working Group 3rd Report on Wireless Wireline Integration*, at 16 (Sept. 30, 2000).

¹⁹ *Local Number Portability Administration Working Group Report on Wireless Wireline Integration*, (May 8, 1998).

was not reached on porting between wireline and wireless carriers.”²⁰ The working group was left with three key questions that NANC needed to resolve:

- Does the difference in the scope of porting capabilities between wireless and wireline service providers create a competitive disadvantage which would be inconsistent with the FCC’s objectives for numbering?
- If so, is the competitive disadvantage overridden by the FCC’s order to implement wireless – wireline portability to encourage CMRS – wireline competition?
- Would the inability in certain situations for a wireless end user, staying at the same location, to keep their telephone number when changing to a wireline service provider be acceptable from a statutory or regulatory perspective?²¹

The NANC was unable to answer the three key questions and the rate center issue was forwarded to the Commission. To date, the FCC has not acted upon these questions.

If the FCC were to act upon these questions, we believe that it would not have to go any further than question one. USTA believes that there is a difference in the scope of porting capabilities between wireless and wireline service providers that has not led to a competitive disadvantage that is inconsistent with the FCC’s objectives for numbering. Intra-modal and inter-modal competition is flourishing for both wireline and wireless telephony. The Commission in the Verizon Petition proceeding recognized the importance of wireless in the promotion of local competition and found that more customers are substituting their wireless telephone for their wireline telephones.²² In addition, we believe that speculation surrounding customer benefits associated with the expansion of existing LNP requirements that CTIA seeks in its Petition has not been supported by credible documentation. USTA asserts that competition is occurring between wireline and wireless carriers unimpeded by the existing LNP obligations imposed on ILECs. Thus, the Commission need not reach the final two questions because

²⁰ *Id.* at 22.

²¹ *Id.* at Appendix D § 1.1

expanding the scope of ILEC LNP obligations as requested by CTIA will not significantly increase competition and justify the regulatory and financial difficulties that ILECs will encounter in its implementation.

USTA submits that there are no material changes in circumstances since the issuance of the Working Group Report that requires a change in the current limitation of ILEC LNP to an ILEC's rate center. As the Working Group Report clearly states "there is a lack of consensus whether the difference constitutes a lack of competitive parity."²³ The working group looked at the following issues in making its determination: wireline rating architecture, wireline local calling areas, wireline NXX assignment, wireline TN assignment, wireless rating architecture, wireless local calling areas, wireless NXX assignments, wireless telephone number assignment, limitations on the scope of service provider portability, location portability, and example porting scenarios.²⁴ Consequently, after reviewing all of the data, the working group found that:

Porting from a wireline service provider to a wireless service provider is permitted as long as the subscriber's initial rate center is within the WSP's service area and the WSP has established interconnection/business arrangements for calls to wireless numbers within that rate center. This could apply even when the subscriber is moving to another LATA because the terminal mobility characteristic of almost all wireless applications. With terminal mobility the subscriber can be physically located anywhere.

Porting from a wireless service provider to a wireline service provider is only allowed when the subscriber's physical location is within the wireline rate center associated with the wireless NPA-NXX.

This creates a difference from an end user perspective when porting from a wireline to wireless service provider versus porting from a wireless to a wireline service provider. This difference is due to the inherent differences in service areas and terminal mobility between wireline and wireless service providers.²⁵

²² *Id.*

²³ *Id.* at § 1.2.

²⁴ *Id.*

²⁵ *Id.* at § 6.0.

USTA agrees with the working group's analysis regarding the parity issues surrounding LNP between wireline and wireless carriers. In addition, we believe that the Commission correctly found that wireline LNP should be bound by the existing rate center of the ILEC. Wireline carriers rate and route calls based upon individual rate centers, where as wireless carriers calling plans are not limited by geographic scope to rate centers. Consequently, USTA agrees with the working group that "the inherent differences in service areas and terminal mobility" make it extremely difficult for wireline to wireless LNP.

Finally, if the Commission were to overturn itself and order LNP outside of the wireline rate center, it would have a severe financial impact upon ILECs. It would require ILECs to reconfigure their networks at a substantial cost to both the carrier and consumer. In addition, it would require the FCC and ILECs to adjust the entire LNP scheme seven years after its implementation. Such a major change should not be made pursuant to a petition for declaratory ruling. It would require, at a minimum, a rulemaking proceeding that would allow for full consideration of all issues relevant to the merits and equities of such a major and costly change.

III. If The FCC Acts On CTIA's Petition, The FCC Must Examine The Regulatory Issues Outside Of LNP That Impact Fair Inter-Modal Competition

USTA has previously stated to the FCC that it opposes wireless LNP. Moreover, CTIA acknowledges the existence of inter-modal competition for voice services. However, it proposes increased regulatory burdens for ILECs as the appropriate FCC response to increased competition.

USTA remains opposed to the imposition of LNP requirements on CMRS providers. Should CTIA push the FCC to act on its Petition, it invites the FCC to engage in a lengthy, but necessary, exercise to examine the regulatory issues outside of LNP that impact fair inter-modal competition between wireless and wireline service providers, including the conditions upon

which universal service support should be available to both. Such an exercise is not in the interest of either industry and only serves to play into the hands of those that wish to further regulate the telecommunications industry.

CONCLUSION

For the reasons set forth above, USTA respectfully requests that the Commission deny CTIA's Petition as being premature and not in the public interest

Respectfully submitted,

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